

# SENATE BILL REPORT

## SB 6041

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As of January 13, 2018

**Title:** An act relating to civil legal aid.

**Brief Description:** Concerning civil legal aid.

**Sponsors:** Senators Pedersen, Rivers, Frockt, Fain, Hasegawa, Hunt, Saldaña, Dhingra, Darneille, Hobbs, McCoy, O'Ban, Liias, Keiser, Conway, Palumbo and Kuderer; by request of Office of Civil Legal Aid.

**Brief History:**

**Committee Activity:** Law & Justice: 1/09/18.

### Brief Summary of Bill

- Requires The Office of Civil Legal Aid (OCLA) to periodically assess the most prevalent civil legal problems experienced by low-income people in the state.
- Updates authorized areas of legal representation for civil legal aid funding to be consistent with the greatest areas of need identified by the civil legal needs study.
- Prohibits state civil legal aid assistance to persons who are not legally in the United States, except those who have been battered or subject to extreme cruelty, are victims of sexual assault or trafficking, or were beneficiaries of Deferred Action for Childhood Arrivals (DACA).

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Shani Bauer (786-7468)

**Background:** The legislature established OCLA in 2005 as an independent agency in the judicial branch. OCLA is responsible for the administration and oversight of state funds that are appropriated by the Legislature to provide civil legal aid services. OCLA does not provide legal aid services directly. Rather, OCLA contracts with attorneys to provide civil legal aid services to eligible low-income clients throughout the state. The Northwest Justice

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Project is the primary statewide provider of civil legal aid services. OCLA is responsible for reporting to the legal aid oversight committee on the use of state funds for legal aid.

State law designates authorized areas of legal representation that may be provided with state civil legal aid funding including: domestic relations, public assistance, health care, housing and utilities, mortgage foreclosures, home protection bankruptcies, consumer fraud and unfair sales practices, rights of residents of long term care facilities, wills and estates, elder abuse, and guardianship. A special committee of the Washington Supreme Court commissioned a civil legal needs study through Washington State University in 2015. This study revealed that the current statute does not authorize state civil legal aid funds to be used for many of the most prevalent legal needs of low income individuals in the state. Further, the study showed that the average number of legal problems per household has increased from 3.3 in 2003 to 9.3 in 2015.

State law also outlines activities for which legal aid funds may not be used, such as: lobbying, class action lawsuits, representation of labor unions, and representation of undocumented aliens. Undocumented alien is not defined in state statute. The common definition of an undocumented alien is a foreign-born person who does not have a legal right to be or remain in the United States.

The Violence Against Women Act (VAWA), originally passed by Congress in 1994, provides special protection for non-citizen spouses and children who have suffered battery or extreme cruelty at the hands of a U.S. citizen or lawful permanent resident (LPR). A person who can prove that the abuse occurred may file a petition for immigration status under VAWA. The Battered Immigrant Women Protection Act of 2000 (VAWA 2000) also created new forms of immigration relief for immigrant victims of sexual assault or trafficking.

DACA was a federal immigration policy that allowed some individuals who entered the country as minors, and had either entered or remained in the country illegally, to receive a renewable two-year period of deferred action from deportation and to be eligible for a work permit. As of 2017, approximately 800,000 individuals were enrolled in the program created by DACA. The policy was established by the Obama administration in June 2012 and rescinded by the Trump administration in September 2017. Implementation of the repeal was suspended for six months. On March 5, 2018, immigrants enrolled in DACA will become eligible for deportation.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Substitute):** In addition to reporting on the use of state funds for legal aid, OCLA must periodically assess the most prevalent civil legal problems experienced by low-income people in Washington State and the capacity of the state-funded legal aid system to meet the legal needs arising from such problems.

Authorized areas of legal representation that may be provided with state legal aid funding are updated as follows:

- public assistance is changed to governmental assistance and services;
- Social Security is eliminated;

- home protection bankruptcies is changed to consumer, financial services, credit, and bankruptcy; and
- consumer fraud and unfair sales practices is eliminated.

The following areas of legal representation are added:

- employment;
- disability rights;
- education, including special education;
- administrative agency decisions; and
- discrimination prohibited by local, state, or federal law.

When entering into a contract with a qualified legal aid provider, OCLA shall require the provider to provide legal aid in a manner that meets generally accepted standards for the delivery of civil legal aid.

Funds distributed to qualified legal aid programs may not be used to represent individuals who are in the United States without legal authority. However, this does not prohibit the use of funding to provide legal assistance to persons who:

- have been battered or subjected to extreme cruelty, as those terms are defined in VAWA;
- are victims of sexual assault or trafficking in the United States; or
- were beneficiaries of DACA or a federal executive program that had protected them from removal.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Proposed Substitute:** PRO: Two years ago, the OCLA released the most comprehensive study ever completed in the state on the legal needs of low income people. The study found that 71 percent of low income people experienced one legal problem per year and get help with those legal problems only 24 percent of the time. The study directed OCLA to look at both budget and policy areas for improvement. The 2016 Justice Reinvestment Program received strong bipartisan support in the 2017-19 operating budget and serves as a guide for legal aid funding. On the policy side, it became apparent that policy changes are needed in the statute. Authorized issue areas for representation in the statute were last amended over 20 years ago. Legal aid is not able to provide services except as specifically provided. Family problems and rental housing no longer lead the list of the greatest legal needs. Rather, health care, employment, and consumer credit issues are areas where low income people experience the most problems. For example, state legal aid funding may not be used to help people file bankruptcy, challenge illegal debt collection practices, predatory consumer practices, wrongfully denied benefits or wages, reasonable accommodations for disabilities in the workplace, or face health and safety risks in their employment.

This bill would reconcile statutory areas of authorized activity with areas of greatest need. Each one of these changes is indicated and finds its source in the legal aid needs study. There will never be enough funding to help low income individuals with all of their needs, but we must ensure that scarce legal aid funding is targeted to help people solve problems where they experience the greatest legal need.

The impact of consumer credit and debt collection issues on low income families has changed over time. Health care debt plays a large role in this area and is recognized as a widespread national problem. These issues affect access to housing and a family's ability to meet its basic living needs. Low wage workers experience a variety of barriers that prevent them from retaining stable employment. The change in this bill would allow legal aid funding to be used to assist these families.

**Persons Testifying:** PRO: Senator Jamie Pedersen, Prime Sponsor; James Bamberger, Director, Office of Civil Legal Aid; Michael Spearman, Judge, Court of Appeals, Division 1; César Torres, Executive Director, Northwest Justice Project.

**Persons Signed In To Testify But Not Testifying:** No one.